



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,236	11/09/2001	James F. Zucherman	5910-162	6669
65901 7590 09/24/2008 COATS & BENNETT/MEDTRONIC 1400 CRESCENT GREEN SUITE 300 CARY, NC 27518				
EXAMINER				
COMSTOCK, DAVID C				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
09/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/037,236

Applicant(s)

ZUCHERMAN ET AL.

Examiner

DAVID COMSTOCK

Art Unit

3733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 60-67, 97, 106, 108-110, 112, 113 and 119-137.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733

/David Comstock/
Examiner, Art Unit 3733

Continuation of 11, does NOT place the application in condition for allowance because: The endcap is disposed generally transverse to the longitudinal axis of the shaft (i.e., a line which would extend vertically up the center of Fig. 3) at least because it is positioned to extend (i.e. thickness) in a direction that is transverse to the longitudinal axis of the shaft. It is certainly not unreasonable to construe the endcap as being disposed generally transverse to the longitudinal axis of the shaft, since the meaning of the term "disposed" is broad and admits of various interpretations and more importantly, the thickness of the endcap extends in a transverse or radial, outward direction. As such, it occupies a position that would be on an annular frame of reference with respect to the shaft. Likewise, Examiner's interpretation of the endcap facing the spacer is not unreasonably broad, but rather is quite literal. It is Applicant's responsibility to draft the claims to overcome any ambiguity that may be present. It is also noted that assemblies are formed by assembling the individual components thereof. Therefore, when referring to an assembly (as is shown by Voydeville), it is a distinction without a difference to say "integrally assembled" instead of "integrally formed". Moreover, without the pin being secured in place by the endcap, the spacer could not be longitudinally constrained, since the parts would not be assembled and there would be no structure in place to retain the spacer. Therefore, the endcap, together with other elements, indeed constrains displacement of the spacer. Applicant's arguments pertaining to the parallel but differing claim terminology between claims 60+ and 128+ is without merit, as Applicant clearly understood the relationship of the terms and addressed the rejection accordingly. Finally, the terminology set forth in the rejection primarily addresses the currently pending claims but may address limitations that were previously pending and/or that potentially could be added again by amendment. As at least what is claimed has been referenced and discussed, it should not be a problem to describe the nature of the reference. Accordingly, the Examiner maintains the finality of the outstanding rejection.

Note regarding item 7 above: The after-final request for reconsideration will be entered (the form indicates "proposed amendment(s)").